

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
High Point Preferred Insurance Company, :

Plaintiff, :

-against- :

Madison Square Garden, L.P., et al., :

Defendants. :
----- X

*Motion denied as
moot. See Stipula-
tion and order of
even after heretofore.
So ordered.*

W. H. V. 4/20/09

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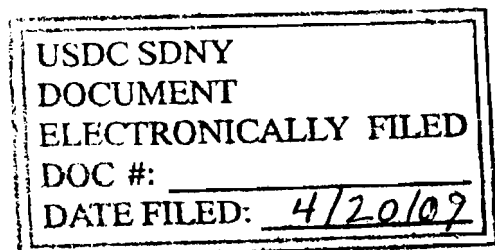
NOTICE OF MOTION

MEMO ENDORSED

**MOTION BY DEFENDANT MADISON SQUARE GARDEN, L.P.
TO DISMISS COMPLAINT**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Madison Square Garden, L.P. ("MSG") moves this Court for an Order dismissing with prejudice Count I of Plaintiff High Point Preferred Insurance Company's ("High Point") complaint. As set forth in the accompanying memorandum of law:

1. Count I of High Point's complaint alleges that MSG violated the New York Dram Shop Act, N.Y. Gen. Oblig. Law § 11-101(1), and seeks damages equal to the amount of personal injury protection (PIP) benefits that High Point has paid as a result of the alleged violation.
2. Count IV alleges a cause of action against MSG's general commercial liability insurer for PIP reimbursement pursuant to the New Jersey PIP reimbursement statute, N.J. Stat. Ann. § 39:6A-9.1.
3. The New Jersey PIP reimbursement statute, under which High Point has brought its claim, is the exclusive remedy for New Jersey PIP insurers to recover benefits they have paid.

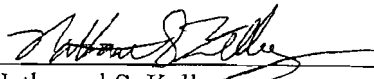


4. Under the PIP statute, an alleged tortfeasor that carries general commercial liability insurance coverage is immune from suit for PIP reimbursement, and a PIP insurer may seek recovery only from the alleged tortfeasor's insurer.
5. Even if the PIP reimbursement statute were not an exclusive remedy, a PIP insurer lacks standing to sue under the Dram Shop Act.

Accordingly, Count I of the complaint, High Point's sole claim against MSG, should be dismissed with prejudice.

Dated: April 6, 2009

Respectfully submitted,


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CERTIFICATE OF SERVICE

Robert J. Candella, hereby certifies that, on April 6, 2009, I served the foregoing Motion to Dismiss and Memorandum of Law in Support on Behalf of Defendant Madison Square Garden, L.P. upon the following parties by causing a true and correct copy of the aforementioned papers to be delivered by the Court's CM/ECF system and/or via Federal Express overnight delivery:

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Dated: April 6, 2009



Robert J. Candella